Religious Toleration in the United States

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"Religious Toleration in the United States: The Case of the Jehovah's Witnesses"

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I - Introduction

The development of constitutional liberties in the United States supports Justice Holmes' insight that the life of law is experience and not logic. This essay examines the Supreme Court's treatment of the religious sect known as Jehovah's Witnesses and suggests that the judicial principles of toleration and accommodation articulated in the cases involving the Witnesses demonstrate the pragmatic character of American constitutional development. The paper also suggests that in gaining greater freedom of expression for themselves, the Witnesses enlarged the sphere of freedom for all Americans. The accommodation and toleration of groups such as the Witnesses demonstrates the vitality of the American system. Finally, it is strongly suggested that toleration was afforded the Witnesses in an attempt to contrast the "American way" with the oppressive Fascist regimes.

II - Jehovah's Witnesses

The Jehovah's Witnesses were founded by a Pittsburgh clothing store manager, Charles Taze Russell (1852-1916) during the 1870's. Under Russell and his successor, Joseph F. Rutherford (1870-1942), the group attracted a large following through its literal approach to Biblical interpretation and through the use of pamphlets, books, and magazines. A key to the Witnesses' success was the doctrine that each member of the sect is a "minister" charged by God to spread the group's message. Based on their literal interpretation of the Bible, Witnesses reject, and in many ways manifest hostility toward, secular society; they refuse to vote and to hold office: male members claim that they are divinely excused from military service; they refuse to salute the flag and refuse to stand for the national anthem.

Witnesses espouse a collection of beliefs which clash with orthodox Christianity. For instance, they reject the view that Christ was God or the Son of God; they reject the doctrine of the Trinity; they reject the usual understanding of the Holy Spirit as God present in the world. They teach that Christ (Jehovah's Chief Witness) has come into the world and will soon gather up the 144,000 souls who are to be saved. As a "millenial" sect they prophesy the imminent end of the world (Russell had set the date as 1914) and a final catastrophic battle of Armageddon between the angelic forces of Jehovah led by Christ and the forces of Satan. The Witnesses believe that Christ will emerge victorious from Armageddon and that for a time, righteous people will populate the earth (also, the dead who have led good lives will rise from the dead). The forces of Satan in the contemporary world, claim the Witnesses, are led by the Roman Catholic Church.

The Witnesses teach that the essence of being religious consists in "witnessing", that is, evangelizing others with the sect's message. Virtually all

American households are visited at least once a year by Witnesses who express a desire to engage in "Bible study", who ask to discuss a topic with the householder, and who, when refused, offer to sell (or give away) the current issues of the Witnesses' literature, *Watchtower* and *Awake!*. It is the Witnesses' method to return in several weeks to attempt to deepen the relationship.

Witnessing takes on a special value when it is accompanied with opposition; in other words, persecution of the Witnesses is proof that they are right and that Satan is at work opposing them. It is due to these beliefs that in the 1930's and 1940's the Witnesses sought out heavily Catholic areas in which to engage in their provocative evangelical work. They faced a "no lose" situation: if they swayed their auditors, it proved the effectiveness of their methods and the appeal of their message; if they were rejected and mistreated, it proved that they were the carriers of truth. The latter situation was the usual one encountered: the Witnesses were widely rejected and, indeed, were the victims of mob violence on numerous occasions.

While the Witnesses have modified their approach considerably, the effectiveness of their methods is still impressive. They constitute one of the fastest growing religious movements in the world.[1] By 1987 the group was active in 205 countries, with a membership total of over 3 million. In the United States and Canada alone the group had over 730,000 members organized in over 8,000 "Kingdom Halls".[2]

III - The Witnesses Before the Supreme Court

A . Pamphleteering, Confronting, Parading, and Doorbell Ringing

From the first, the Witnesses were blessed with great success in their struggles before the courts. This was due in large measure to the skill and tact of their chief counsel, Hayden C. Covington, who led their cause in many of their important cases.[3] It was undoubtedly due also to the fact that the most intense period of litigation by the Witnesses coincided with the Hitler era; the Court seemed to take pains to draw a distinct contrast between the political order represented by Nazism and that under the United States Constitution. The Witnesses lost a number of cases, but in two of these cases (cases involving licences for distributing literature and cases arising from the requirement that school children salute the flag) the Court subsequently reversed itself. Thus, the only cases lost by the Witnesses during the 1930's-1950's period involved parading without a permit, verbally assaulting a police officer, the sale of literature by children, and the use of a public park without securing a permit.

In approaching the Witnesses' constitutional claims the Court took special note of the history and beliefs of the Witnesses but relied primarily on the speech and press provisions of the First Amendment and only incidentally on the guarantee of religious freedom. In this way the precedents set in the Witnesses' cases were available to be invoked by secular as well as religious groups.

In the first of the cases involving the Witnesses, *Lovell v. Griffin* in 1938 ,[4] the Court struck down a city ordinance which had been used to suppress the distribution of literature on the streets. The Court held that the ordinance placed

excessive power in the hands of the officials. The Witnesses were on their way to victory after victory. In 1939 the Court, by an eight-to-one vote, followed *Lovell* as it reversed the conviction of the Witnesses for littering; it was permissible to punish the act of littering, reasoned the Court, but constitutional liberties must be left intact.[5] In the 1940 case of *Cantwell v. Connecticut* [6] the Witnesses were engaged in collecting funds and also in playing one of their favorite phonograph records, "Enemies", which contained harsh attacks on the Catholic Church. The Court invalidated a requirement that persons obtain official approval before soliciting for funds for charitable and religious causes and also overturned the Cantwells' breach of the peace conviction related to playing the record. The official charged with granting permission to solicit for funds had unlimited discretion, said the Court , unrelated to any valid "times, places, and manner" requirement which furthered legitimate state interests.

The Witnesses suffered a temporary setback in 1942 as the Court held that Witnesses could be required to secure a "peddler's license" from the state.[7] The Witnesses had been convicted for violenting a variety of ordinances, some referring to "peddlers" and some to "occupations". The ordinance of Opelika, Alabama, provided that permits to distribute literature could be revoked without notice. A majority of five Justices reasoned that merchandise was involved and that the cases could be treated as dealing with commercial activity. The Witness challenging the Opelika ordinance had never taken out a license, reasoned the majority, and, therefore, could not challenge the revocation provisions. In 1943, however, the Court reversed itself in *Murdock v. Pennsylvania* and held that nondiscriminatory license taxes could not be applied to Jehovah's Witnesses. To reach this conclusion the Justices had to find that the Witnesses were due preferential treatment.

> A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance... Freedom of press, freedom of speech, freedom of religion are in a preferred position. [8]

In keeping with the doctrinal position taken in *Murdock*, the Court held that a state requirement that book sellers obtain a license could not be applied to the Witnesses[9] and that Witnesses were entitled, besause of their First and Fourteenth Amendment religious exercise rights, to conduct their proselytising activities on the premises of a company-owned town and on the property of a housing project controlled by the federal government.[10]

On a number of occasions the Witnesses were given to excesses and the Supreme Court ruled against them. The first major defeat for the Witnesses was in 1941 in *Cox v. New Hampshire.* [11] Approximately 60 Witnesses had been convicted of parading without a permit. A unanimous Court subscribed to Chief Justice Hughes' opinion that a city has the power to require parade permits as a reasonable regulation of the "time, place, and manner" of the use of public streets. *Cox* influenced the outcome in a 1953 case in which Witnesses were convicted for violating a park regulation by holding religious services in the park after officidals had denied them a permit; the ordinance, said the Court, was a reasonable regulation of the park's use and was not discriminatory.[12]

Another loss for the Witnesses came in 1941 in *Chaplinsky v. New*

Hamsphire [13], one of the most colorful of the Witnesses' cases. A state court convicted Witness Chaplinsky of violating a state statute making it an offense to call anyone "offensive and derisive" names in public. In the course of denouncing public authorities, Chaplinsky had called the city marshal a "God damned racketeer" and a "damned Fascist". The Supreme Court upheld his conviction, finding that such language constituted "fighting words" lacking in "redeeming social value". Finally, in 1944 the Witnesses sustained their final major defeat as a sharply divided Court upheld the application of a state child welfare law to an adult Witness who was convicted of causing a minor child (a Witness) to "sell" literature.[14]

The Court was supportive of Witnesses' claims when communities adopted special measures aimed specifically at the Witnesses. In 1943 the Court invalidated an ordinance aimed at deterring Witnesses from disturbing the residents of an Ohio town during the day; the town was a mining town and many of the residents worked shift work, which meant that they were sleeping during the day; the ordinance's apologists also claimed that it was a method of deterring crime. The ordinance made it unlawful for anyone "distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker" or call the occupants to the door for the purpose of distributing the materials. Speaking for a six-to-three majority of the Court in *Struthers v. Ohio,* Justice Hugo Black found that the ordinance inhibited the dissemination of ideas by substituting the will of the community for the will of the individual householder. Unsolicited distribution of literature, wrote Justice Black, "may be either a nuisance or a blind for criminal activities, (but) they may also be useful to members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion."[15] Black pointed out that such widely dissimilar bodies as organized churches, political parties, and the federal government used this method extensively. "Door to door distribution of circulars," he continues, "is essential to the poorly financed causes of little people", and if communities were interested in regulating their activities they must resort to methods which do not offend the Contitution.

A significant gauge of the Witnesses' constitutional status is reflected in a 1951 case in which the Court distinguished *Struthers* as it upheld an ordinance aimed at deterring door-to-door salespersons as applied to ordinary (non-religious) commercial activities.[16] Similarly, the Court ruled in a 1948 case that Jehovah's Witnesses were constitutionally protected in the use of a loudspeaker system; the following year it held that a city could apply an ordinance prohibiting "loud and raucous" amplified speech when applied to a labor group.[17] In the 1948 case the Witnesses had initially secured a permit to use a loudspeaker in a public park; the permit to use the device had expired and had not been renewed due to citizens' complaints. The Witnesses involved were convicted after they persisted in using the equipment without a permit. The Court's opinion demonstrates the close inter-relationship between free speech and religious expression.

B. The Flag Salute Controversy

The best-known of the Witnesses' victories before the Supreme Court came in *West Virginia State Board of Education v. Barnette* decided in 1943.[18] The Witnesses gave a literal interpretation to certain Scripture passages (Deuteronomy 4:15-19 and 6:13), concluding that the Bible prohibited bowing down before "graven images" and that the flag was such an image. The same interpretation barred their assuming any posture which would indicate acceptance of the

legitimacy of the state -such as holding one's hand over one's heart or even standing during the pledge of allegiance to the flag or the singing of the national anthem. Failure to participate in these practices during the highly nationalistic era of the 1930's and 1940's naturally triggered clashes between civic groups and officials, on the one hand, and Jehovah's Witnesses on the other. Beginning in 1937 the Witnesses challenged flag salute requirements in a dozen states and the state courts had generally held that while the flag salute requirement was constitutional it could not be used as a basis for applying criminal sanctions against those who did not comply. Non-complying pupils, however, could be expelled and state and federal courts had refused, with few exceptions, to compel school officials to reinstate the expelled pupils. In 1940 the Supreme Court, with only Justice Harlan F. Stone dissenting, upheld Pennsylvania's flag salute requirement as applied to the Witnesses' public school children in *Minersville School District v. Gobitis*. The Witnesses had secured a ruling from a federal district court that the state requirement was unconstitutional. Writing for the Court, Justice Felix Frankfurter found that the school officials were using the flag salute and pledge of allegiance as means to develop a healthy sense of national unity. "We are dealing with an interest inferior to none in the hierarchy of legal values", wrote Frankfuter. "National unity", he declared, "is the basis of national security". Ceremonies such as flag saluting were means of evoking "that unifying national sentiment without which there can ultimately be no liberties, civil or religious". The "mere possession of religious convictions", continued Frankfurter, "does not relieve the citizen from the discharge of political responsibilities". The law, in the Court's view, was "a general law not aimed at the promotion of or the restriction of religious beliefs".

In this dissenting opinion Justice Stone formulated the arguments which were to triumph in 1943 in the *Barnette* case. No other Justice joined him as he wrote:

> The law which is thus sanctioned is unique in the history of Anglo-American legislation. It does more than suppress freedom of speech and more than prohibit the free exercise of religion, which concededly are violations of the First Amendment and are violations of liberty guaranteed by the Fourteenth. For by this law the state seeks to coerce these children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions.[19]

By 1943 two Justices who had supported the Frankfurter position, were replaced by Justices with different views, and three other Justices who had joined Frankfurter in *Gobitis* had changed their position on the flag salute issue.[20] The moving language of Justice Robert H. Jackson, writing for the majority in *Barnette*, is an eloquent testimony to the contribution of the Jehovah's Witnesses to our constitutional law. Wrote Jackson

> To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.[21]

In another eloquent passage Jackson expressed an idea which the Court has quoted frequently:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics,

nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.[22]

C - Recent Controversies

While the Witnesses have lost much of the confrontational style which characterized their activities in the 1930's and 1940's, they stand ready to challenge secular authority. Some of the post-1960's controversies involving the Witnesses present issues which reflect extensions of the principles established in the classic cases. In 1977 Witnesses successfully challenged a New Hamsphire requirement that automobile license plates carry the state's motto, "Live Free or Die".[23] The Witnesses contended that complying with the requirement forced them to compromise their conscience, since they were opposed to the message expressed by the motto. In a 1981 ruling favoring free exercise of religion, the Supreme Court ruled that a Jehovah's Witness who resigned his position with a manufacturing plant after being assigned to work on the production of tank turrets was entitled to employment compensation. To deny the Witness such benefits, said the Court, would be to compromise his religious beliefs by placing monetary burdens on his freedom of conscience. [24]

Witnesses interpret the Scriptures (Genesis 9:4 and Leviticus 17:14) as a prohibition on blood transfusions. In numerous instances Witnesses have refused to consent to the use of blood transfusions for themselves and their children. When the issue has arisen in the lower courts, it has resulted in no settled doctrinal position; in cases involving minors, however, courts have regularly appointed guardians to consent to blood transfusions for the children of Witnesses. The Supreme Court has not ruled definitely on whether or not medical practitioners and facilities must honor the Witnesses' beliefs concerning blood transfusions, although in 1968 the Court affirmed a lower federal court ruling that the state's interest in the welfare of children outweighed the parents' assertion of religious beliefs.[25]

IV - Conclusion

The Supreme Court's treatment of the Jehovah's Witnesses provides the dispassionate observer with a sharply drawn portrait of the American spirit of pragmatic accommodation. Even in the cases in which the Court rules against the Witnesses (such as the parading-without-permit and the "fighting words" cases), the Court clarifies the nature of speech and religious exercise within a representative democracy. Since the Witnesses' major court victories coincide with the Court's adoption of a protective stance relative to minorities and personal freedoms generally, the cases involving the Witnesses permit the more liberal Justices to set forth principles of constitutional law resulting in broader protection for the rights of all under the Constitution. We may note also that accommodating groups like the Witnesses is "easy" for the American system, since doing so makes minimal financial demands on the society. Thus, the contribution of the Witnesses remains as a lasting testimonial to the pragmatic vigor of the American system.

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1 - For studies of the Witnesses see: M. James Penton, *Apocalypse Delayed: The Story of Jehovah's Witnesses* (Toronto: University of Tornto Press,

1985); Gary Botting, *The Orwellian World of Jehovah's Witnesses* (Toronto: University of Toronto Press, 1984); James A. Beckford, *The Trumpet of Prophecy* (New York: John Wiley & Sons, 1975); Herbert H. Stroup, *The Jehovah's Witnesses* (New York: Columbia University Press, 1945). Helpful and concise summaries of the Witnesses' beliefs are found in: Kenneth Boa, *Cults, World Religions, and You* (Wheaton, I11.: Victor Books, 1980) Frank S. Mead, *Handbook of Denominations in the United States* (Nashville, Tenn.: Pantheon Press, 1975).

2 - See Constant H Jacquet, Jr., ed., *Yearbook of American and Canadian Churches* 55th Issue (Nashville, Tenn.: Abingdon Press, 1987), pp. 72-73.

3 - The briefs for some of the Witness cases are collected in Philip B. Kurland and Gerhard Casper, eds. *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law* (Washington, D.C.: University Publications of America, 1975) (*Cox v. New Hampshire*, vol. 38; *Chaplinsky v. New Hampshire*, vol. 39; *West Virginia Board of Education v. Barnette*, vol. 4O; *Marsh v. Alabama*, vol. 43).

4 - 303 U.S. 444 (1938). In *Coleman v. Griffin*, 55 Ga. App. Repts. 124, 189 S.E. 427 (1936), appeal dismissed, 302 U.S. 636 (1937); the Supreme Court refused to consider a challenge of the same ordinance by Witnesses on the grounds that the case failed to present a "substantial federal question".

5 - *Schneider v. Irvington*, 308 U.S. 147 (1939). The cases involved featured bans on distributing literature in streets and public places as well as from door to door.

6 - *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

7 - *Jones v. Opelika*, 319 U.S. 584 (1942).

8 - 319 U.S. 105, 115.

9 - *Follet v. Town of McCormick*, 321 U.S. 573 (1944).

1O - *Marsh v. Alabama*, 326 U.S. 5O1 (1946); *Tucker v. Texas*, 326 U.S. 517 (1946).

11 - 312 U.S. 569 (1941).

12 - *Poulos v. New Hampshire*, 345 U.S. 395 (1953).

13 - 315 U.S. 568 (1942).

14 - *Prince v. Massachusetts*, 321 U.S. 158 (1944).

15 - *Martin v. City of Struthers*, 319 U.S. 141, 145 (1943).

16 - *Breard v. City of Alexandria*, 341 U.S. 622 (1951).

17 - *Kovacs v. Cooper*, 336 U.S. 77 (1949).

18 - 319 U.S. 624 (1943).

19 - 310 U.S. 586, 601 (1940).

20 - Chief Justice Hughes had been replaced by Justice Stone; Justice Jackson had replaced Stone; the seat held by Justice McReynolds was now filled by Justice Rutledge. See the statement of Justices Black and Douglas in *Jones v. Opelika*, 316 U.S. 584, 623-624 (1942).

21 - 319 U.S. 624, 641.

22 - Ibid., 642.

23 - *Wooley v. Maynard*, 430 U.S. 705 (1977).

24 - *Thomas v. Review Board*, 450 U.S. 707 (1981).

25 - *Jehovah's Witnesses in State of Washington v. King County Hospital*, 278 F. Supp. 488 (1967), affirmed 390 U.S. 598 (1968); see *People ex rel. Wallace v. Labrenz*, 411 I11. 618, 104 N.E.2d 769 (1952), certiorary denied, 344 U.S. 824 (1952).